



December 30, 2021

The Honorable Merrick B. Garland  
Office of the Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

CC: See Appendix

**Re: Sanctioned Suicide**

Dear Attorney General Garland,

This letter refers to the December 21, 2021 correspondence to you from several members of the U.S. House of Representatives<sup>1</sup>. It is likely that you have already received numerous comments from advocacy groups, technology companies, and members of the public. We write to you regarding this issue as a group of involuntary celibates (“incels”)<sup>2</sup> who are familiar with the former site operators of Sanctioned Suicide and many of its members.

**Pro-suicide viewpoints are protected by the First Amendment**

Those who oppose the speech rights of Sanctioned Suicide users blithely dismiss the First Amendment. Disappointingly, neither the New York Times (an institution whose journalism admirably shaped free speech jurisprudence throughout U.S. history) nor other detractors engage in any discussion of freedom of expression. Rather, they start with the wholly conclusory and meritless premise that the speech of Sanctioned Suicide members is so outrageous that it must be constitutionally proscribable<sup>3</sup>. They also imply that because authorities in Australia, Germany, and Italy have restricted access to Sanctioned Suicide, the U.S. Government should follow suit. That is an misguided view; Mr. Attorney General, you surely agree that the DOJ should uphold American legal principles instead of deferring to foreign authorities.

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<sup>1</sup> Letter from Representative Lori Trahan et al. Accessed December 23, 2021 at: <<https://twitter.com/RepLoriTrahan/status/1473311328802594816>>.

<sup>2</sup> **DISCLAIMER:** This letter represents only the views of the undersigned, and should not be construed to represent the views of any particular incel website, forum, or community, or incels as a group.

<sup>3</sup> Letter from Carrie Goldberg. Accessed December 29, 2021 at: <<https://twitter.com/cagoldberglaw/status/1473806622245982211>>.



As you are well aware, the First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech”. This is fundamental to the American way of life: “It is through speech that our convictions and beliefs are influenced, expressed, and tested...It is through speech that our personalities are formed and expressed.”<sup>4</sup> Not once has the Supreme Court held the discussion of suicide to be one of the “well-defined and narrowly limited classes of speech”<sup>5</sup> that are “historical[ly] and traditional[ly]”<sup>6</sup> unprotected. There exists no federal statute which criminalizes the act of suicide, so the expression of pro-suicide viewpoints, however morally odious they may seem, simply cannot be categorized as the constitutionally proscribable “incitement to imminent lawless action”<sup>7</sup> or as speech integral to criminal conduct<sup>8</sup>.

Some medical and social care professionals may consider certain speech to be unsavory or even unhealthy. But even that is no legitimate rationale to exclude such speech from any First Amendment consideration altogether. As Chief Justice Roberts noted, “[t]he First Amendment’s guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs.”<sup>9</sup>

### **Congress should uphold, not challenge, their constituents’ First Amendment rights**

Since no existing federal criminal law prohibits the advocacy of suicide, members of Congress ask you which actions they can take to “give the DOJ the authority necessary to prosecute the Sanctioned Suicide website owners and delist the site in the United States”. Quite frankly, such an inquiry reflects their contemptuous disdain for their own constituents’ speech rights. No reasonable statute can possibly be constructed to allow the delisting of Sanctioned Suicide, and the prosecution of its current or former site operators, without infringing on the United States Constitution.

“[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”<sup>10</sup> Any law

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<sup>4</sup> *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 817 (2000).

<sup>5</sup> *Chaplinsky v. New Hampshire*, 315 U. S. 568, 571 (1942).

<sup>6</sup> *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 502 U. S. 105, 127 (1991) (Kennedy, J., concurring).

<sup>7</sup> *Brandenburg v. Ohio*, 395 U.S. 444 (1969). See also *Hess v. Indiana*, 414 U.S. 105 (1973).

<sup>8</sup> *State v. Melchert-Dinkel*, 844 N.W.2d 13 (Minn. 2014). Holding that a Minnesota state law criminalizing advising or encouraging suicide failed strict scrutiny, noting that “speech integral to harmful conduct”, *Id.* at 19-20, does not equate to the First Amendment’s exception to “speech integral to criminal conduct”, *Giboney v. Empire Storage Co.*, 336 U.S. 490, 498 (1949). Underlying represents our emphasis.

<sup>9</sup> *United States v. Stevens*, 559 U.S. 460, 470 (2010).

<sup>10</sup> *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002).



prohibiting speech on the basis of its content is therefore “presumptively invalid”<sup>11</sup> and subject to strict scrutiny. Here, by considering the suppression of particular pro-suicide speech, members of Congress ask the DOJ to engage in viewpoint discrimination, a “more blatant” and “egregious”<sup>12</sup> form of content discrimination. “The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”<sup>13</sup>

Needless to say, strict scrutiny requires government action to satisfy a “compelling state interest” in a “narrowly tailored” manner and via the “least restrictive means”. We can arrive at a common understanding that suicide prevention is a “compelling state interest”. Nonetheless, the implied policy proposals of Sanctioned Suicide’s detractors fail the other prongs.

The potential criminalization of pro-suicide speech, such as that found on Sanctioned Suicide, would be startling in its overbreadth. This would be flatly unconstitutional. “The Government may not suppress lawful speech as the means to suppress unlawful speech.”<sup>14</sup> Taken to its extremes, would a teenager face the weight of a federal criminal prosecution for typing “kys”<sup>15</sup> during a heated match of Call of Duty? A law holding site operators criminally liable for the pro-suicide speech of site users would be similarly, if not more, absurd. Simply put, such an action would encourage larger social media platforms (“the modern public square”<sup>16</sup>) to over-censor even general discussion of depression and suicide. This chilling effect to Americans’ ability to discuss their mental health difficulties, an issue still considered taboo by many, would be unimaginable and counterproductive.

In no way, shape, or form would the criminalization of pro-suicide speech constitute the “least restrictive means” for the Government to achieve its interest in suicide prevention. A remedy to disagreeable speech is counterspeech. “[T]o avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence...[s]uch must be the rule if authority is to be reconciled with freedom.”<sup>17</sup> “The theory of our Constitution is ‘that the best test of truth is the power of the thought to get itself accepted in the competition of the market.’”<sup>18</sup>

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<sup>11</sup> *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992); internal citation omitted.

<sup>12</sup> *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002).

<sup>15</sup> Internet acronym for “kill yourself”. See Dictionary.com, accessed December 29, 2021 at: < <https://www.dictionary.com/e/acronyms/kys/> >.

<sup>16</sup> *Packingham v. North Carolina*, 582 U.S. \_\_ (2017).

<sup>17</sup> *Whitney v. California*, 274 U.S., at 377 (1927) (Brandeis, J., concurring).

<sup>18</sup> *United States v. Alvarez*, 567 U.S. 709, 728-729 (2012) (Kennedy, J.); quoting *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). Held the Stolen Valor Act of 2005 as unconstitutional; noting that the Government can counter false claims of Medal of Honor awards by creating a database of Medal of Honor recipients.



Members of Congress claim to be deeply disturbed that Sanctioned Suicide receives four times the page views as the National Suicide Prevention Lifeline. Clearly, a less restrictive and perfectly constitutional remedy is to appropriate funds to the Department of Health and Human Services to promote the Lifeline. Likewise, Congress can pursue its compelling interest in suicide prevention via the many institutions whose budgets they control, e.g. the National Institutes of Health for research, the Department of Education for K-12 counseling grants, Veterans Affairs. Instead of seeking ways to criminalize protected speech, members of Congress should perhaps ask why, in such an economically developed and heavily policed society, many of their constituents feel so hopelessly wretched and miserable.

## Conclusion

Mr. Attorney General, we are confident you will fully consider the First Amendment in your answer to the December 21, 2021 correspondence from Congress. The late Justice Brennan, whom you clerked for, fundamentally reshaped free speech jurisprudence for the better during his 34-year tenure on the Supreme Court bench. We know that your Office will respect the Court's decisions.

As incels, we are no stranger to claims that our own speech, occasionally unpopular and inflammatory, deserves censorship; notwithstanding the Constitution's requirement that the government demonstrate "more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint"<sup>19</sup> to justify its prohibition of expressive conduct. "[T]he fact that society may find speech offensive is not a sufficient reason for suppressing it."<sup>20</sup> For this reason, many incels strongly value civil liberties and the rule of law. We write this letter to outline our view on the First Amendment rights of those at Sanctioned Suicide, because we believe in a system of government where individuals have an opportunity to speak freely, especially before the government makes a decision about their lives.

Best Regards,



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<sup>19</sup> *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 509 (1969)

<sup>20</sup> *FCC v. Pacifica Foundation*, 438 U.S. 726, 745 (1978)



## **Appendix**

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